

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 11153/2011

Suo Motu

----Petitioner

Versus

State Of Raj

----Respondent

Connected With

D.B. Civil Writ Petition No. 5102/2019

Pyar Singh Meena S/o Ramesh Chand Meena

----Petitioner

Versus

State Of Rajasthan

----Respondent

D.B. Civil Writ Petition No. 8224/2019

Raj Kumar Meena S/o Girraj Prasad Meena

----Petitioner

Versus

State Of Rajasthan

----Respondent

For Petitioner(s)	:	Mr. Virendra Dangi, Senior Counsel with Ms. Nidhi Khandelwal), Mr. A.K. Bhargava) Members of Monitoring Committee Mr. S.R. Surana, Senior Counsel with Mr. K.K. Chhawal Mr. Pradeep Chaudhary Mr. Siddharth Bapna-applicant Ms. Poonam Chand Bhandari Ms. Neerja Khanna-applicant Mr. Dilip Sharma-applicant Mr. A. K. Bhandari, Senior Counsel with Mr. Vaibhav Bhargava for applicant
For Respondent(s)	:	Mr. R. P. Singh, AAG with Mr. S. K. Saini Mr. R. D. Rastogi, ASG with Mr. Akshay Bhardwaj Mr. Amit Kuri Ms. Neetu Bhansali Shri Ravi Solanki, Addl. Chief Engineer, Irrigation Department, present in person. Shri Ashok Kumar Yogi, Deputy Commissioner Zone No.11, JDA present

in person.

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA**

Order

05/11/2019

Shri Virendra Dangi, learned senior counsel and Shri A.K. Bhargava, learned counsel, who are Members of the Monitoring Committee, have today filed a report, according to which many encroachments are still existing in village Jamwaramgarh on khasra no.108, 161 and 168, which are recorded as 'gairmumkin nala'. Shops and houses are built up there upon. It is contended that JDA is itself constructing the wall in the river bed of the Roda river, which has decreased its width and virtually converting it into a small Nala. In village Meghraj Singh Pura, JDA has constructed a cemented concrete road, which at certain places has such height that it stops the flow of water towards Ramgarh Dam. While the JDA has removed certain encroachments, but the debris are still lying there, which create hurdle in the flow of water. The Public Works Department has constructed a cemented concrete road from Toda Meena to Bilod, which is crossing Banganga River and obstructing the flow of Banganga River. One resort has been constructed on water flowing area of Village Achrol, which was earlier known as Bishnoi Hotel and Resort, which was earlier known as Achrol Niwas Resort. This resort is also creating obstacle in the water flow area of Achrol River.

Shri R.P. Singh, learned Additional Advocate General submits that he shall have this matter examined by requiring the concerned officers to do the needful for removal of encroachment.

We direct the Officers of the Revenue Department, Jaipur Development Authority and the Irrigation Department to inspect all the aforementioned sites and if any illegal construction is found in the river bed or river flowing area; whether by any private citizen or by government body, to take steps to restore the same to the original position and thereafter compliance report thereabout be filed.

Shri Pradeep Choudhary, learned counsel has filed application on behalf of one Shri Yogendra Singh Kalvi, a retired Deputy Conservator of Forest, with many valuable suggestions and with the prayer that he be impleaded as party-respondent.

We permit him to intervene in the matter. The suggestion given by him in para 4 of the application shall be examined by the respondents while formulating the policy. The application no.4/19 is accordingly disposed of.

Pursuant to the order of this Court dated 5.3.2019, Village Arvar in District Ajmer and village Panchwa in District Nagaur were selected as model villages for revival of water bodies. District Collector, Ajmer and District Collector, Nagaur were called before this Court on that day and were required to prepare the plan for revival of the water bodies in these villages. It was also directed that if need be, the work should for revival of these water bodies in these two villages be carried out under MGNREGA scheme so that benefit of upcoming monsoon season may be availed. Unfortunately, so far, no plan has been prepared or submitted before this Court.

Shri R.P. Singh, learned Additional Advocate General submits that as far as Village Arvar is concerned, significant process has been made for revival of the water bodies. However, he would request for time to submit the latest progress report about village Arvar and Panchwa and also the plan prepared thereabout.

■ We direct that the District Collectors, of all 33 Districts in the State of Rajasthan to select minimum two villages, not necessarily closer to the District Headquarters, in their respective districts, for revival of the water bodies, where as per the revenue records, such bodies are shown to have existed for long. The Principal Secretary, Revenue Department and the Principal Secretary of Irrigation Department shall work in tandem with the Nodal Officer Shri Rohit Kumar Singh for preparing the model guidelines to revive water bodies with the advise of experts in the field for the entire State of Rajasthan. Shri Pradeep Choudhary, learned counsel may be opted as Member in that Committee. The Committee shall consider the suggestions given in para 4 of the application filed by Shri Yogendra Singh Kalvi. The list of the selected villages in all the districts of the State and guidelines so prepared may be placed before this Court on or before the next date.

This now brings us to evaluation of the compliance of 13 specific directions issued in detailed order passed by this Court on 25.09.2019.

Direction no.1 contained in that order required the Chairman, Board of Revenue, Ajmer to get all the reference cases with regard to the land of the river-bed and water flowing area of the Ramgarh dam, decided by constituting one or two special benches. The direction was issued in the face of the submission made by learned Members of the Monitoring Committee that a total of 780 reference cases were prepared by the respondents, but actually reference of only 633 was made, out of which 271 have been decided by the Board, but many of them have not been implemented as yet.

Shri R.P. Singh, learned Additional Advocate General submitted on that day that he would enquire and apprise the Court why 147

cases which were identified for reference to the Board of Revenue were actually not referred and what is the status of implementation of 271 decided cases with regard to land of Ramgarh Dam. He shall also inform the Court about the status of 362 pending reference cases.

The compliance report filed on behalf of State today indicates that a total of 15,355 references were made to the Board of Revenue under Section 16 of the Rajasthan Tenancy Act, 1955 from all over the State of Rajasthan, which are intended to revive various water bodies and the water flowing areas of different rivers, out of which 9,735 have been decided and 5,620 are still pending.

■ We direct that the respondent-State in the next compliance report shall indicate in particular the following-

- (a) what specific directions were issued in 271 cases decided by the Board of Revenue on reference namely; as to whether the reference has been accepted or rejected and if accepted; whether any challenge to order passed by the Board of Revenue has been made and if so, any interim order is passed and what is the stage of implementation of decided cases in which reference was accepted;
- (b) what is the stage of 362 reference cases, with regard to land of Ramgarh Dam, which are/were pending;
- (c) the respondents shall state in the compliance report as to the manner in which 9,735 reference cases were decided, whether accepted or rejected and where any such reference has been accepted, whether any challenge thereto has been made and any interim order has been passed and what is the stage of execution/implementation thereof;

(d) that if any of the reference cases is rejected, whether the State has taken any step to challenge the order of Board of Revenue before the High Court;

(e) that the respondents shall file affidavit of the Registrar of the Board of Revenue as to what steps are being taken for early disposal of 5,620 pending reference cases and how many special benches have been made. The affidavit should also indicate as to how many reference cases have been decided within past six months so as to know the pace of the disposal.

With regard to direction no.2, Shri R.P. Singh, learned Additional Advocate General submits that a team of Scientists of Central Road Research Institute (CRRI) led by Dr. Vasant G. Havangi visited Ramgarh Dam on 19.10.2019 and have collected samples of the silt from 3-4 different places in Banganga river. It is submitted that the silt in other two rivers i.e. Madhoveni and Tala, is similar. According to prima facie assessment by team of Scientists of CRRI, the silt is appropriate for road embankment, but their formal report is still awaited.

With regard to direction no.3, Shri R.P. Singh, learned Additional Advocate General submits that a letter has been written to Director, MNIT, Jaipur on 4.11.2019 to have the quality of sand or silt examined in the context of its utilisation.

■ We require the Director, MNIT to depute their Scientists in this regard within next fortnight and submit their report to the respondent-department within a month.

With regard to direction no.4, Shri R.P. Singh, learned Additional Advocate General submits that once the report is received from Central Road Research Institute, the same shall be submitted to National Highway Authority of India, with an offer to make use of the

silt in the construction of ring road and wherever the road construction projects of NHAI are underway.

With regard to direction no.5, Shri R.P. Singh, learned Additional Advocate General submits that the respondents would require some more time to make survey of different villages in different Gram Panchayats with regard to plantation work and the extent of survival of the plantation considering that the plantation was made only three months back. He also submits that one of the conditions imposed on lease holders by the Department of Environment relates to the plantation of trees by the lease holders, but it is difficult to monitor such plantation, particularly when plantation can be done anywhere i.e. even away from the lease area. Therefore, the Mines Department has written to the Environment Department that the lease holders should be required to deposit the requisite amount in cash with the Department of Environment so that the plantation work can be got done in a planned manner. This would make it easy to monitor survival of the plants. He submitted that the progress of this aspect shall be reported to this Court on the next date.

With regard to direction no.6, Shri R.P. Singh, learned Additional Advocate General has submitted that the Department of Irrigation has carried out a survey of the submergence areas of Neota and Gular Dam. The survey report has been enclosed with the compliance report, a copy of which shall also be forwarded to the JDA for the needful.

Shri Amit Kuri, learned counsel for the JDA submits that he has today filed an affidavit of Shri T. Ravikanth, Commissioner of JDA, wherein it is stated that so far report from the Irrigation Department on the basis of survey conducted by them, reflecting damage and extent of construction made in Neota and Gular Dams, has not been

received. He submits that once the report is received, the appropriate action shall be taken to restore the land back to same old status. However, the survey report should also accompany the relevant record substantiating the fact that the land in question falls in submergence area.

With regard to direction no.7, Shri Amit Kuri, learned counsel for JDA submits that Commissioner, JDA, has personally inspected the area and has filed the affidavit. In the affidavit of the Commissioner, it is stated that he inspected the area of Neota and Gular Dam and also ring road area including the other sites of three schemes of which 90A proceedings have been cancelled and also the site of other three schemes where Section 90B proceedings were approved.

Shri Amit Kuri, learned counsel for JDA further submits that on receipt of the report of survey by the Irrigation Department, on the basis of record and comparison of the same with site, the plan for restoration of dams would be prepared. It is submitted that the Commissioner in his affidavit further submitted that he intended to hold the joint meeting with officials of National Highway Authority of India, experts from MNIT and with the officials of Water Resources Department to prepare a Plan and proposal for restoration of Dams, which would be placed before this Court for its consideration.

Shri R.P. Singh, learned Additional Advocate General submitted that copy of the report of the Irrigation Department has been handed over to Shri Amit Kuri, the learned counsel for the JDA in the Court. The relevant record along with such report shall be formally sent to the JDA by Irrigation Department within one week.

■ It is directed that the JDA while approving the proceedings under Section 90A in future, shall take precaution regarding the areas

close/adjacent to or around the Dam/river bed and shall prior thereto obtain the opinion of Irrigation Department in this respect.

With regard to direction no.8, Shri Amit Kuri, learned counsel for the JDA has invited attention of the Court to the affidavit of Commissioner, JDA, wherein it is stated that the Deputy Commissioner, Zone-13, JDA and the Secretary, JDA have been directed to take appropriate steps to ensure that no new construction either on road or boundary or house takes place in the submergence area of the Neota and Gular dams. Copy of the UO note dated 1.11.2019 and 4.11.2019 written to Chief Controller Enforcement, JDA containing the necessary directions have been placed on record. Shri Amit Kuri, learned counsel for JDA has submitted that the JDA has already cancelled the 90A proceedings in respect of colonies sought to be developed by three cooperative societies in this very area. But there still existed three colonies where 90B proceedings were approved in the year 1994, 2002 and 2009 respectively and lease deed was also issued in some cases. JDA will make its submissions thereabout after receiving the survey report alongwith records from the Irrigation Department.

■ We direct that the JDA shall in this connection get the videography and photography of the area in question and prepare a report with reference to khasra numbers as to the existing constructions to ensure that no new construction is allowed to take place in future and if any such construction is raised, it can be identified and demolished.

With regard to direction no.9, Shri R.P. Singh, learned Additional Advocate General submits that no payment has been made to any contractor for construction of road on the land of Neota Dam, nor

such payment shall be made in future. In fact, tender was floated, but it was later cancelled.

With regard to direction no.10 & 11, Shri R.P. Singh, learned AAG submits that the Irrigation Department has directed its officers to inspect the site of both the dams on monthly basis and if any construction activity is found, it shall inform the JDA.

■ We direct that the Irrigation Department while making such survey/inspection get the videography/photography of the area done so that existing constructions are identified with reference to khasra nos. and no new construction is allowed to come up and if any such new construction is raised, the same can be immediately identified and action shall be taken for its removal.

■ With regard to direction no.12 for notifying the establishment of the Rajasthan Corporate Social Responsibility (RCSR), Shri R.P. Singh, learned AAG undertakes on behalf of Chief Secretary of the State that the notification shall be issued within a week.

It is very unfortunate that despite repeated directions of this Court, the meetings convened by the Nodal Officer Shri Rohit Kumar Singh, Additional Chief Secretary, Medical & Health Department, have been attended by very junior level Officers. This Court taking note of this trend and looking to the significance of the issue involved in this matter, namely; revival of the water bodies in the State of Rajasthan, issued direction no.13 to the effect that the meeting should be attended by the officers of different departments, not below the rank of Principal Secretary or the Secretary of the concerned department. Despite such direction, most of the departments in the meeting that was convened thereof on 30.10.2019 were represented by junior level officers.

The Court is informed of the fact that this Court in the proceeding of this very suo motu public interest litigation had constituted a High Power Committee headed by Chief Secretary of the State with the Principal Secretary/Secretary of different departments. Considering that the Chief Secretary of the State has failed to get direction no.13 complied with by ensuring the Principal Secretary/Secretary to attend the periodical meetings presided by the Nodal Officer, he should himself hold the monthly meeting of High Power Committee so that the decisions at the highest level are taken seriously by all concerned and are immediately implemented.

Shri Siddharth Bapna, learned counsel for the applicants submits that even though the sewage treatment plant has been established in Sanganer, but many printing and dyeing factories in the Sanganer area are still releasing untreated polluted water into the channel connecting Neota and Gular Dams.

Shri R.D. Rastogi, learned Additional Solicitor General for Pollution Control Board has submitted that even the Regional Officer, Jaipur (South) of the Board has reported that due to diversion of the water at Gular Dam, part of the treated waste water is reaching to Neota Dam through a Kaccha nallah (feeder), which passes through Sanganer area and it is in this process that polluted water again mixes with the treated waste water, which has resulted into the whole exercise going waste.

■ We direct the Secretary, Pollution Control Board to constitute a team of the concerned Engineers to inspect the STP and submit its report whether it is functioning properly. Such team shall also inspect the concerned area in Sanganer to find out as to how many factories are releasing untreated water into the nallah. The Pollution Control Board shall file details as to how many of them were proceeded

against by issuing notices or launching prosecution or imposing penalties or directing disconnection of water/electricity supply. Such details be filed with the compliance report on the next date.

Application has been filed by Shri A.K. Bhandari, learned senior counsel for applicants Navratan Lal Agarwal and Kishan Lal Agarwal for their impleadment. Learned counsel for the applicants may provide a copy of the same to learned members of the Monitoring Committee and also to Shri R.P. Singh, learned AAG. The application shall be considered on the next date of hearing.

In application no.3/19, Shri Dilip Sharma, learned counsel for the applicant-Virendra Valiya has submitted that in the land of khasra nos.402, 477 and 470 of village Nausal, Ward No.60 of Municipal Area, Ajmer, pattas have been issued by Ajmer Development Authority. The applicant prays for seeking direction to the Ajmer Development Authority and Municipal Corporation, Ajmer to take appropriate steps against the illegal construction.

Shri R.P. Singh, learned Additional Advocate General prays for time to verify the above facts and file his response to the said application.

A copy of this order be provided to learned Members of the Monitoring Committee, Mr. R.P. Singh, learned Additional Advocate General and Mr. R.D. Rastogi, learned Solicitor General, for needful.

List the matter on 18.12.2019.

(NARENDRA SINGH DHADDHA),J

(MOHAMMAD RAFIQ),J